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LUCENT TECHNOLOGIES INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING,

Plaintiff,

v.

LUCENT TECHNOLOGIES INC.,

Defendants.

STEVEN J. CARAUDDO,

Real Party in Interest.

CASE NO. C 07-3747 PJH

**DEFENDANT LUCENT
TECHNOLOGIES INC.'S OPPOSITION
TO MOTION TO INTERVENE AND IN
SUPPORT OF MOTION TO STRIKE
JURY DEMAND**

Date: January 30, 2008

Time: 9:00 a.m.

Dept: 3, 17th Floor

I. INTRODUCTION

Steven Carauddo's Motion to Intervene attempts not only to add new counsel but also new claims against Lucent Technologies. Rule 24 of the Federal Rules of Civil Procedure governs situations in which persons not already parties may intervene in existing litigation. Mr. Carrauddo seeks to intervene as a matter of right under Rule 24(a) and also seeks permissive intervention under Rule 24(b). While the practical effect of allowing a plaintiff to intervene is the same under either approach, there are different requirements under each prong. Mr.

1 Carauddo does not meet the requirements to intervene as a matter of right under Federal Rule
 2 24(a) because he cannot establish that the Department of Fair Employment and Housing
 3 (“DFEH”) will not adequately protect his interests . Nor does Carrauddo establish requirements
 4 for permissive intervention under Federal Rule 24(b).

5 **II. LEGAL ARGUMENT**

6 **A. The DFEH Adequately Protects Mr. Carauddo’s Interest and the Motion to** 7 **Intervene as a Matter of Right under Rule 24(a) Should Be Denied**

8 Intervention as a matter of right under Rule 24(a) (2) exists only when the court holds
 9 that a person seeking intervention has established three elements:

- 10 1. an interest in the subject matter of the pending litigation;
- 11 2. a substantial risk that the litigation will impair the interest; and,
- 12 3. existing parties do not adequately protect that interest.

13 *Purcell v. BankAtlantic Financial Corp.* 85 F.3d 1508 (11th Cir. 1996) *cert. denied*, 519 U.S.
 14 867. All three elements must be satisfied before an applicant may exercise a right to intervene
 15 under Rule 24(a)(2). *Id.* For several reasons, Mr. Carrauddo does not have that right here.

16 First, Carrauddo argues that California Government Code section 12965(c)(2) provides
 17 that in any action filed by the DFEH, the party claiming to be aggrieved “shall have the right to
 18 participate as a party and be represented by his or her own counsel.” Mr. Carrauddo cites no
 19 authority, however, establishing that this state *procedural* rule would apply in a diversity action
 20 pending in federal court. A state statute conferring an unconditional right to intervene does *not*
 21 displace Rule 24. “[A] state statute can inform the Rule 24(a)(2) calculus, but it cannot displace
 22 the requirement that a would-be intervenor satisfy each of the rule’s prerequisites.” *Public*
 23 *Service Co. of New Hampshire v. Patch*, 136 F.3d 197, 208 (1st Cir. 1998). In that case, the court
 24 rejected a proposed intervention by a state agency, even though a state statute granted the state
 25 agency the right to intervene, because the agency’s interests were adequately represented by the
 26 present parties. This is precisely the situation here – the DFEH adequately represents Mr.
 27 Carraduo’s interests here; indeed, it is their duty to do so.

Second, Mr. Carraudo asserts that the DFEH will not adequately represent his interests. He argues that “the DFEH is charged with considering the interests of all [California] employees ... in determining ... its settlement posture and its aggressive pursuit of the matter. Potential conflicts may arise.” Memo at 4:19-21. Mr. Carraudo’s failure to cite authority for this proposition is understandable, since his argument is directly contrary to controlling law. A governmental entity, such as the DFEH here, is *presumed* to represent the interests of its citizens. When the putative intervenor shares the same interests as a governmental entity, absent a “very compelling showing to the contrary,” it will be presumed that the governmental entity will adequately represent the intervenor’s interests. *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003). While Mr. Carraudo speculates that the DFEH might have a different a “settlement posture” or might be less “aggressive” in its pursuit of the matter, “[w]here parties share the same ultimate objective, differences in litigation strategy do not normally justify intervention.” *Id.*, citation omitted. Certainly, Mr. Carraudo’s bare speculation, bereft of any underlying basis in fact, concerning potential differences in litigation strategy do not suffice to meet his “very compelling” burden.

Mr. Carraudo simply has not, and cannot establish that the DFEH is not capable of representing its interests. Indeed, it borders on hubris for Mr. Carraudo to assert that his attorneys can better litigate this matter in his interests than the DFEH, the very entity that is specifically charged with enforcing the FEHA and which undoubtedly has more experience doing so.

B. Potential Prejudice to the Existing Parties Will Result if Permissive Intervention is Allowed

Rule 24(b) of the Federal Rules allows for permissive intervention “where an applicant’s claim and the main action have a question of law or fact in common.” However, the existence of these grounds do not “automatically entitle an applicant to intervene.” *Venegas v. Skaggs*, 867 F.2d 527, 530 (9th Cir. 1989). Whether intervention will be permitted rests within the sound discretion of the court, and the court should consider additional factors in exercising this discretion. *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998). For example, a court “must

1 consider whether the intervention will ‘unduly delay or prejudice the adjudication of the rights of
2 the original parties.’” *Venegas, supra*.

3 Here, the only possible result from allowing Mr. Carraudo to intervene will be delay and
4 prejudice to the existing parties. Mr. Carraudo’s attorneys can only multiply the proceedings by
5 propounding their own discovery, filing additional motions than those that may be filed by the
6 DFEH, and frustrating or impeding settlement efforts. *See Taylor Communications Group, Inc.*
7 *v. Southwestern Bell Tel. Co.*, 172 F.3d 385, 389 (5th Cir. 1999) (permissive intervention should
8 be denied if allowing it would unduly complicate the case). Alternatively, if Mr. Carraudo
9 intends to allow the DFEH to manage the litigation, then there is plainly no need for intervention
10 in the first place since, as established above, Mr. Carraudo’s interests are adequately protected
11 by the DFEH. This is undoubtedly why the adequacy-of-representation factor is important not
12 just in determining whether intervention is permitted as a matter of right, but also in determining
13 whether discretionary intervention should be allowed. *Spangler v. Pasadena City Bd. of*
14 *Education*, 552 F.2d 1326, 1329 (9th Cir. 1977).

15 While Mr. Carraudo seeks to assert two additional causes of action, these claims are both
16 purely derivative claims that add nothing of substance to the claims already asserted by the
17 DFEH. The only substantive difference between the claims asserted in Mr. Carraudo’s proposed
18 complaint in intervention and the DFEH’s complaint is that the proposed complaint includes a
19 prayer for attorneys’ fees. The DFEH is not entitled to attorneys’ fees. Government Code §
20 12987(a)(3).¹ The potential for attorneys’ fees obviously impairs the ability of the present
21 parties to settle this matter since Mr. Carraudo’s attorneys will certainly demand that any
22 settlement additionally compensate them for the attorneys’ fees incurred. Indeed, it seems clear
23 that the possibility that Mr. Carraudo’s attorneys might receive fees which they otherwise would
24 not be entitled to receive if the DFEH prosecutes the case on its own is the sole justification for
25 this motion.

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27
28 ¹ Indeed, the presence of possible attorneys’ fees belies the true motivation for seeking intervention here.

1 The court may consider many additional factors, including: 1) the nature and extent of the
2 intervenor's interest; 2) their standing to raise relevant legal issues; 3) the legal position they
3 seek to advance, and its probable relation to the merits of the case; 4) whether changes have
4 occurred in the litigation so that intervention that was once denied should be reexamined; 5)
5 whether the intervenor's interests are adequately represented by other parties; 6) whether
6 intervention will prolong or unduly delay the litigation, and 7) whether parties seeking
7 intervention will significantly contribute to full development of the underlying factual issues in
8 the suit and to the just and equitable adjudication of the legal questions presented. *Spangler*,
9 *supra*, 552 F.2d at 1329, citations omitted.

10 All of these factors, to the extent they have any bearing on the present matter, militate
11 against allowing intervention here. Mr. Carraudo's interests and those of the DFEH are
12 perfectly aligned – both seek identical damages (with the exception, as mentioned above, of
13 attorneys' fees), including injunctive relief. Mr. Carraudo does not have standing to assert any
14 claims substantively different from those already asserted by the DFEH. The DFEH and Mr.
15 Carraudo both seek to advance the same legal positions. Mr. Carraudo's interests are more than
16 adequately represented by the DFEH. Allowing intervention will cause undue delay, will
17 undoubtedly multiply the proceedings, and will undoubtedly result in additional expense to
18 Lucent (expense that may otherwise be devoted towards settlement). Finally, there is no basis on
19 which to suggest that Mr. Carraudo's attorneys will significantly contribute to a full development
20 of the underlying factual issues beyond that of which the DFEH is capable.

21 Conversely, allowing intervention here provides absolutely no benefit either to the
22 existing parties or even to Mr. Carraudo. His proposed complaint seeks nothing save attorneys'
23 fees that is not available through the existing action. It is presumed as a matter of law that the
24 DFEH will adequately protect Carraudo's interests. When all factors are examined, not a
25 single one militates in favor of intervention here.

1 **III. CONCLUSION**

2 For the foregoing reasons, Defendant respectfully requests that the Motion to Intervene
3 be denied.

4 DATED: January 9, 2008

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6 By: /s/ Leslie J. Mann
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